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8TH CIRCUIT DISMISSES LAWSUIT FILED BY FEMALE INMATES

BISMARCK –The 8th Circuit court of appeals today dismissed a class action lawsuit filed against the state by female inmates. The inmates had alleged discriminatory conditions in the programs and facilities operated by the Department of Corrections and Rehabilitation (DOCR).

The 8th Circuit found there was no evidence to suggest that any differences in programs or facilities for male and female inmates was caused by gender discrimination, concluding that any differences were based on the much smaller female prison population, the greater number of female inmates in a minimum custody classification, and the need for female inmates to have a separate prison facility.

The inmates had further claimed gender-based inequality in the prison industries and vocational programs provided by DOCR, in violation of Title IX. Title IX requires that no person can be excluded from an education program on the basis of gender. The court also dismissed this claim, concluding that the differences were not based on gender but location.

Attorney General Wayne Stenehjem noted that the court adopted the state's argument that the difficult problems of prison administration and reform are not for the courts but instead are for the executive and legislative branches of government.

"The 8th Circuit has affirmed that the DOCR's decisions regarding housing and programming for female inmates are based on sound correctional policies for a growing female inmate population," said Stenehjem. The Attorney General's office provides general counsel services to the DOCR.

The inmates filed their complaint in 2003 and were later granted class action status. During the six years of litigation, the state's Risk Management fund paid out almost \$112,000 for attorney fees and \$22,000 in expenses. The case was argued in the 8th Circuit by Assistant Attorney General Jean Mullen, who has since retired.

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